

UNITED STATES DISTRICT COURT

[DISTRICT AND STATE]

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|----------------------------|---|------------------------------|
| UNITED STATES OF AMERICA | : | |
| | : | |
| v. | : | CRIMINAL NO. [docket number] |
| | : | |
| [DEFENDANTS' NAMES] | : | [UNDER SEAL] |

UNITED STATES' APPLICATION FOR PERMISSION
TO DISCLOSE RECORDS SUBPOENAED BY THE GRAND JURY

The United States of America, by **[name]**, United States Attorney for the **[district and state]**, and the Office of Consumer Litigation, United States Department of Justice, file this Application for Permission to Disclose Records Subpoenaed by the Grand Jury, and states as follows:

I. INTRODUCTION

With the sentencing of defendant[s **name(s)**] on **[date]** the United States' prosecution of the defendant[s] in this action is completed. As this Court is aware, the defendant[s] were key members of a longstanding odometer-tampering operation running from late **[date]** through at least **[date]**. Through this operation, the defendant[s **and their coconspirators**] purchased more than **[#]** late-model cars, rolled back the cars' odometers on average approximately **[avg. rollback]** miles, and then sold these cars at fraudulently inflated prices to other used cars dealers. Since the defendant[s] sold the rolled-back cars to other used car dealers, many of the consumer victims do not know that the defendant[s]' odometer fraud operation was the source of their vehicle or that their car has more miles than stated on the odometer. Because the grand jury subpoenaed certain of the documents which identified the rollbacks, the government seeks the

Court's approval for a proposed consumer notification process in order to avoid any question whatsoever regarding compliance with the grand jury secrecy requirements of Fed. R. Crim. P. 6(e).

II. THE NATURE OF THE PROPOSED NOTICE

The government proposes sending a notice to inform consumers that the vehicle they purchased has an altered odometer. The notice would only be sent where the vehicle in question has been positively identified as a rollback. Such a notice would serve at least three important functions:

- First, it would inform the consumer that the vehicle's mileage is higher than the consumer believed, thus indicating a need for increased scrutiny for potential mechanical failure.¹
- Second, it would prevent the consumer from continuing the fraud by certifying false odometer information if the consumer resells the car.
- Third, it would alert the consumer that he or she has been the victim of a crime, which would give rise to potential renegotiation of the purchase transaction with the dealer involved, or other possible civil remedies.²

In addition to sending a notice of the rollback, the **[names of the investigating agencies]** (the investigating agencies) would provide consumers seeking documentation of the rollback with copies of documents pertaining to the vehicle's mileage. Some of those documents were

¹ In enacting statutory requirements barring odometer fraud, Congress found that "an accurate indication of the mileage" of a motor vehicle "assists a buyer in deciding on the safety and reliability of the vehicle[.]" 49 U.S.C. § 32701(a)(3).

² The Victims' Rights and Restitution Act of 1990 recognized a legal right for victims of crimes to be informed of "any restitution or other relief to which the victim may be entitled under this or any other law and manner in which such relief may be obtained[.]" 42 U.S.C. § 10607(c)(1)(B).

obtained through the grand jury process, thus giving rise to this application.

III. THE PROPOSED NOTICE WILL NOT VIOLATE THE RULE BANNING DISCLOSURE OF "MATTERS OCCURRING BEFORE THE GRAND JURY"

Fed. R. Crim. P. 6(e) prohibits disclosure of "matters occurring before the grand jury" with certain exceptions, including "when so directed by a court . . . in connection with a judicial proceeding[.]" Rule 6(e)(3)(C)(i). In Church of Scientology International v. United States Department of Justice, 30 F.3d 224 (1st Cir. 1994), the First Circuit recognized that the secrecy afforded grand jury materials extends to "not only the direct revelation of grand jury transcripts but also the disclosure of information which would reveal the identities of witnesses or jurors, the substance of testimony, the strategy or direction of the investigation, the deliberations or questions of the jurors, and the like." Id. at 235 (internal quotation omitted).

The government is well-aware of this Rule and, as is its policy in all criminal matters, intends to honor the Rule scrupulously. It is not the government's intention to disclose "matters occurring before the grand jury." Indeed, so that there can be no question in this regard, we are filing this motion to avoid any questions that might otherwise arise.

Rule 6(e) "is not intended 'to foreclose from all future revelation to proper authorities the same information or documents which were presented to the grand jury.'" In re Grand Jury Investigation, 630 F.2d 996, 1000 (3d Cir.), cert. denied, 449 U.S. 1081 (1980) (quoting United States v. Interstate Dress Carriers, Inc., 280 F.2d 52, 54 (2d Cir. 1960)). Business records created for purposes independent of grand jury investigations have legitimate uses unrelated to the grand jury process, and thus may, under certain circumstances, be disclosed without violating Rule 6(e)'s prohibition against disclosure. See Church of Scientology International, 30 F.3d at 235-36 & n.15.

Here, the fact that a particular vehicle was rolled back is known due to comparison of various

records, some of which were subpoenaed by the grand jury. The government does not intend to disclose that the information was derived in part from the grand jury nor does the government intend to disclose to consumers that any documents provided were subpoenaed by the grand jury.

Instead, the government intends merely to inform the current owner of a vehicle that was subjected to the defendant[s]' scheme that the car's odometer was rolled back. "Opinions" based on a grand jury investigation are not matters occurring before the grand jury. In re Grand Jury Investigation, 610 F.2d 202, 217 (5th Cir. 1980). Thus, the conclusion based upon solely upon a review of invoices, odometer statements, and title histories which indicates that a vehicle's odometer was rolled back does not intrude upon the grand jury process.

Moreover, the disclosure of business records need not reveal a "matter occurring before the grand jury" where the records are created for purposes independent of grand jury investigations and have legitimate uses unrelated to the substance of grand jury proceedings. See Capitol Indemnity Corp. v. First Minnesota Construction Co., 405 F. Supp. 929, 931 (D. Mass. 1975) (Tauro, J.). Here, the government proposes solely disclosing pre-existing business records such as sales invoices and odometer statements, which were obtained and presented to the grand jury.

Disclosure of such records, the government submits, would not encroach upon the grand jury process. See United States v. Dynavac, Inc., 6 F.3d 1407, 1412 (9th Cir. 1993) ("we think that the disclosure of business records independently generated and sought for legitimate purposes, would not seriously compromise the secrecy of the grand jury's deliberations") (quotation omitted) (cited with approval in Church of Scientology International, 30 F.3d at 235). Indeed, the government believes that it would be on sound footing to disclose such records without first seeking a Rule 6(e) order. Nevertheless, the government files this application to avoid any potential question regarding the propriety of this action.

IV. THE CONSUMER VICTIMS' RIGHT TO KNOW PROVIDES A COMPELLING INTEREST JUSTIFYING DISCLOSURE

The Victims' Rights and Restitution Act of 1990 makes it clear that victims of crime have the right to information of the sort the government proposes to disclose. The statute states that crime victims have "[t]he right to be notified of court proceedings," "[t]he right to confer with the attorney for the government in the case," "[t]he right to restitution," and "[t]he right to information about the conviction, sentencing, imprisonment, and release of the offender." 42 U.S.C. §§ 10606(b)(3),(5),(6), & (7). These rights require that the victims understand the nature of the conduct at issue.

In this case, the spirit of the Act requires that victims be notified of the true mileage of the vehicles that they have purchased. Cf. 18 U.S.C. § 3555 (court may require defendant who has been found guilty of offense involving fraud or other intentionally deceptive practices to give reasonable notice to the victims of the offense). Victims have the right to know that the sentencing of the offender and other court proceedings, in part, related to conduct that affected them. Furthermore, some consumers may have the right to civil remedies in relation to the purchase of their vehicle, which can only be adequately addressed using the kind of information the government is proposing to disclose. Finally, disclosure would help prevent further harm from occurring. Once the present owners are knowledgeable about the rollback, they are in a position to take appropriate safety precautions that relate to a high-mileage vehicle. Present owners also would be obligated by law to inform future purchasers that the true mileage of the vehicle is not known.

V. CONCLUSION

For the foregoing reasons, the government requests an order permitting the disclosure of vehicle information and documents pertaining to the true mileage of vehicles sold by the

defendant[s] in this case. A proposed order is attached.

DATED: _____, 19__

RESPECTFULLY SUBMITTED,

[NAME OF U.S. ATTORNEY]
UNITED STATES ATTORNEY

[NAME OF ATTORNEY]
[OFFICE]
[address]
[telephone number]

UNITED STATES DISTRICT COURT

[DISTRICT AND STATE]

UNITED STATES OF AMERICA :
:
v. : CRIMINAL NO. [docket number]
:
[DEFENDANTS' NAMES] :

ORDER PERMITTING THE DISCLOSURE OF
INFORMATION AND DOCUMENTS PRESENTED TO THE GRAND JURY

Upon motion of the United States for an Order permitting the disclosure of information and documents presented to the grand jury pursuant to Rule 6(e) of the Federal Rules of Criminal Procedure,

IT IS HEREBY ORDERED that the attorneys for the government may disclose the following: (1) records that document or purport to document the odometer mileage reading of motor vehicles which have been previously presented to, or subpoenaed by, the grand jury investigating this case; and (2) information about the true mileage of motor vehicles derived from an examination of these records.

Dated: _____

UNITED STATES DISTRICT JUDGE